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Ex Parte Notice

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, MB Docket No. 02-70

Dear Ms. Dortch:

On Friday, August 16, James R. Coltharp of Comcast Corporation spoke by telephone with Royce Sherlock of the Media Bureau concerning allegations made by RCN Corporation. This letter summarizes and to some extent elaborates upon that conversation.

As Mr. Coltharp explained, Comcast's pricing and marketing practices are lawful, and its responses to the growth of competitive alternatives bring the benefits of competition to consumers. RCN's allegations raise no merger-specific issues, and in any event they only involve practices that are entirely consistent with the Communications Act and FCC rules, as well as the antitrust laws.

RCN has provided no evidence that should cause the Commission to delay its approval of the Comcast-AT&T Broadband merger or, indeed, cause any other regulatory concern. Rather, RCN's effort to shield itself from competition, to raise Comcast's costs of competing, and to deny consumers the benefits of competition, should be rejected out of hand.

RCN has now substantially recast its prior allegations and retreated from some of the more outrageous statements it previously presented in this proceeding. Initially, RCN complained that Comcast's pricing and marketing practices were "predatory." Petition of RCN Telecom Services, Inc. To Deny Applications or Condition Consent, MB Docket No. 02-70, at 22-23 (Apr. 29, 2002) (section is captioned "Predatory Pricing"; text refers to "predatory price reductions," "highly aggressive discounts," and "drastic discounts"). In the declaration accompanying RCN's latest letter, however, the only specific claim regarding the value of any promotional discounts pertains to coupons worth $6 per month. Letter from L. Elise Dieterich, outside counsel for RCN, to Marlene Dortch, FCC, MB Docket No. 02-70 (Aug. 14, 2002), Declaration of Ron Maier at ¶ 10. Moreover, RCN's own declarant asserts that "$6 was approximately the difference between Starpower's basic [sic?] cable rate and Comcast's rate, so *the coupons made Comcast's service competitive with Starpower's*." *Id.* (emphasis added). RCN's allegations therefore amount to no more than an objection to Comcast's meeting the price charged by the competition, which is a far cry from "predatory pricing."

Moreover, RCN's declarant specifically admits that, in the two situations he describes, the promotions in question did *not* have geographic or customer-specific restrictions. In the case of the "winback" campaign that allegedly targeted Starpower customers, RCN's declarant acknowledges his "understanding that non-Starpower customers could receive this promotion if they specifically requested it from customer service." *Id.* at ¶ 6. In the case of the campaign that supposedly targeted "a logistical area of Takoma Park," RCN's declarant acknowledges his "understanding that customers outside of Starpower's Takoma Park service area could receive the $6 per month promotion if they specifically requested it." *Id.* at ¶ 10.

Thus, RCN is not really complaining about geographical and customer-specific restrictions; rather, RCN's concern is that certain of Comcast's marketing and promotional efforts may focus on areas in which RCN chooses to offer a competing service, and not those areas where RCN chooses, for whatever reason, not to compete. In essence, what RCN wants is the freedom to serve only certain buildings, or certain neighborhoods, within a given community – and the ability to prevent Comcast from making any extra effort to compete for those households that RCN has chosen as its target market. There is no federal law or FCC rule that imposes such a requirement on services that are competitive and unregulated, and no good public policy reason why such a requirement should ever be adopted. In fact, such a requirement would effectively limit the opportunities for Comcast to respond to competitive offerings in entirely legal and permissible ways that benefit consumers.

As new entrants – as well as more established multichannel video competitors – intensify their efforts to win customers from existing providers of multichannel video services, it is both natural and desirable that established market participants will use marketing tools to retain existing customers and to win back those they may have lost to a competitor. That is what Comcast does, precisely as economists would predict and as policymakers have long hoped. There is nothing the least bit troublesome – much less harmful – about such rivalrous behavior. Nonetheless, as is more fully explained in Comcast's answer to question D.3. of the Bureau's request for additional information, even as Comcast exercises its discretion to focus certain marketing and promotional activities in ways that will respond effectively to marketplace developments, Comcast does *not* impose geographic or customer-specific restrictions on the availability of its promotions within the system or franchise areas in which such promotions are offered.

This letter is submitted pursuant to section 1.1206(b)(2) of the Commission's rules. Please let me know if you have any questions.

Sincerely,

James L. Casserly

cc: Erin Dozier
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